

**Georgia Smokefree Air Act 2005**

**Chapter 290-5-61**

**RULES  
OF  
DEPARTMENT OF HUMAN RESOURCES  
PUBLIC HEALTH**

**CHAPTER 290-5-61  
GEORGIA SMOKEFREE AIR ACT OF 2005**

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## Georgia Smokefree Air Act 2005

## Chapter 290-5-61

**290-5-61-.01 Authority.** The Department of Human Resources and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with the Georgia Smokefree Air Act of 2005, and the rules and regulations adopted and promulgated in connection therewith. The county boards of health may annually request other governmental and educational agencies having facilities within the area of the local government to establish local operating procedures in cooperation and compliance with this chapter.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-10, 31-12A-11, 31-12A-12.*

**290-5-61-.02 Purpose.** These regulations establish standards in accordance with Title 31 Chapter 12A to protect the citizens of Georgia from exposure to secondhand smoke in most enclosed indoor public areas to which the public is invited or in which the general public is permitted. The purpose of the Georgia Smokefree Air Act of 2005 is to preserve and improve the health, comfort and environment of the people of this State, including children, adults, and employees, by limiting exposure to tobacco smoke.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-12.*

**290-5-61-.03 Applicability.** These rules shall apply as follows:

(1) Smoking shall be prohibited in all enclosed public places in this state except as permitted in Code Section 31-12A-6.

(2) Smoking shall be prohibited in all enclosed areas within places of employment except as permitted in Code Section 31-12A-6.

(a) Such prohibition on smoking shall be communicated to all current employees and to all prospective employees upon their application for employment.

(1) The building owner, agent, operator, person in charge or proprietor of a public place shall conspicuously post the work place policy pertaining to smoking in a position clearly visible to all employees.

(2) The building owner, agent, operator, person in charge or proprietor of a public place shall provide the work place policy pertaining to smoking in materials provided to new employees.

(3) These rules and regulations shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.

(4) These rules and regulations shall be liberally construed so as to further the purposes of the Smokefree Air Act of 2005.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-4, 31-12A-5, 31-12A-12, 31-12A-13.*

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**290-5-61-.04 Definitions.** The following definitions shall apply in the interpretation of these rules and regulations:

- (a) "Act" means the Smokefree Air Act of 2005.
- (b) "County Board of Health" means a board established in accordance with Chapter 3 of Title 31 of the Official Code of Georgia Annotated. There is established a county board of health in each and every county of this State empowered to exercise authority in all matters within the county pertaining to health unless the responsibility for enforcement of a matter belongs to another agency under law.
- (c) "Department" means Georgia Department of Human Resources.
- (d) "Private Club" means a facility that is not available for public use, control, or participation and is intended for or restricted to the use of a particular group or class of persons.
- (e) "Reasonable Distance" means that smoking shall occur at a distance outside any enclosed area where smoking is prohibited sufficient to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means, and to ensure that those indoors and those entering or leaving the smokefree area are not involuntarily exposed to secondhand tobacco smoke.
- (f) "Ventilation System" means the continuous supply and removal of air with respect to a space, either by natural or mechanical means, to control chemical and physical hazards as well as to maintain temperature and relative humidity.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-10, 31-12A-2, 31-12A-12.*

**290-5-61-.05 Signage.** The following specifications must be met to comply with the requirement related to 'No Smoking' signs.

- (1) Visibility. 'No Smoking' signs or signs bearing the international 'No Smoking' symbol shall be easily readable, be conspicuously posted, and shall not be obscured in any way.
- (2) Format. The words 'No Smoking', 'Smoking Permitted', 'Smoking Permitted, No One Under the Age of 18 Allowed', and 'No Smoking Beyond this Point' shall not be less than 1.5 inches in height. These signs shall bear the applicable annotated code section, 'O.C.G.A. § 31-12A-1 et seq.'.
- (3) Smokefree Public Place. In a public place where smoking is prohibited, the building owner, agent, operator, person in charge or proprietor shall conspicuously post a sign bearing the words 'No Smoking' or conspicuously post the international 'No Smoking' symbol on all entrances or in a position clearly visible on entry into the place.

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(4) Smoking Area in a Public Place. In a public place where smoking is allowed in an enclosed area, the building owner, agent, operator, person in charge or proprietor shall conspicuously post a sign bearing the words 'Smoking Permitted, No One Under the Age of 18 Allowed' on all entrances or in a position clearly visible on entry into the place.

(a) The building owner, agent, operator, person in charge or proprietor shall conspicuously post a sign inside the exit of all smoking areas, if the exit leads to a smokefree area. The sign shall bear the words, 'No Smoking Beyond this Point' or bear the international 'No Smoking' symbol.

(5) Exempt Status. The building owner, agent, operator, person in charge or proprietor of a public place that is exempt from the Act shall conspicuously post a sign using the words 'Smoking Permitted, No One Under the Age of 18 Allowed' on all entrances or in a position clearly visible on entry into the place. A private residence is not required to comply with this provision unless such residence is used as a licensed child care, adult day care, or health care facility.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-6, 31-12A-7, 31-12A-8, 31-12A-12.*

### **290-5-61-.06 Air Handling Systems.**

(1) Statement. The building owner, agent, operator, person in charge or proprietor of a public place that includes an enclosed area in which smoking is permitted shall keep on file a written statement from a conditioned air contractor licensed by the State of Georgia or from an appropriately certified professional that the air handling system serving the enclosed area meets the requirements as set forth in the Act.

(2) Air Balancing Firm Statement. The building owner, agent, operator, person in charge or proprietor of a public place that includes an enclosed area in which smoking is permitted shall provide, upon request by the Department, county boards of health, or their duly authorized agents, a written statement from a certified air balancing firm that the air handling system performs as designed so as to meet the requirements as set forth in the Act.

(3) Manufacturer Guidelines. The building owner, agent, operator, person in charge or proprietor of a public place that includes an enclosed area in which smoking is permitted shall keep on file manufacturer guidelines and specifications for the air handling system(s) in use.

(4) Maintenance Records and Logs. The building owner, agent, operator, person in charge or proprietor of a public place that includes an enclosed area in which smoking is permitted shall keep on file all the maintenance records and logs for the current and previous year for the air handling system(s) in use.

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(5) Access to Records. The building owner, agent, operator, person in charge or proprietor of a public place shall provide records requested by the Department, county boards of health, or their duly authorized agents within three working days of the request.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-6, 31-12A-12.*

**290-5-61-.07 Hours of Operation.** A smokefree public place must prohibit smoking twenty four hours per day in any area that does not meet the requirements pertaining to enclosed areas and smoking areas as specified in the Act.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-2, 31-12A-6, 31-12A-12.*

### **290-5-61-.08 Outdoor Smoking Areas.**

(1) Reasonable Distance. The building owner, agent, operator, person in charge or proprietor of a public place may designate an outdoor smoking area that is located a reasonable distance from any entrance, exit, window, vent, or air intake system of a building where smoking is prohibited.

(a) If the location of an entrance, exit, window, vent, or air intake system of a building where smoking is prohibited or if the location of a barrier, such as a wall, property line, parking lot, or street makes the reasonable distance requirement impossible to meet, then the building owner, agent, operator, person in charge or proprietor of a public place shall maximize the distance between the outdoor smoking area and the entrance, exit, window, or air intake system of a building where smoking is prohibited.

(2) Ashtrays. Any ashtrays located in an outdoor smoking area shall be placed a reasonable distance from any entrance, exit, window, vent, or air intake system.

*Authority O.C.G.A. Secs. 31-2-4, 31-12A-12.*

### **290-5-61-.09 Enforcement**

(1) The Department, county boards of health, and their duly authorized agents shall enforce the Act.

(a) Any citizen who desires to register a complaint under the Act may initiate enforcement with the Department, county boards of health, and their duly authorized agents.

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(b) The Department, county boards of health, and their duly authorized agents may, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with the Act.

(c) In addition to the remedies provided by the Act, the Department, county boards of health, or their duly authorized agents may apply for injunctive relief to enforce the provisions of the Act in any court of competent jurisdiction.

(2) An owner, manager, operator, or employee of an establishment regulated by these rules and regulations shall inform persons violating these rules and regulations of the appropriate provisions.

(3) The enactment of any other local law, rules and regulations of state or local agencies, and local ordinances prohibiting smoking that are more restrictive than the Act are enforceable.

(4) The Act shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.

*Authority O.C.G.A. Secs. 16-12-2, 31-2-4, 31-5-9, 31-12A-10, 31-12A-11, 31-12A-12, 31-12A-13.*

**290-5-61-.10 Penalties.** Individuals found in violation of the Act shall be guilty of a misdemeanor and, if convicted, shall be punished by a fine not less than \$100.00 and not more than \$500.00.

*Authority O.C.G.A. Secs. 16-12-2, 31-2-4, 31-5-8, 31-12A-12.*

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\*\*\* Current through the 2007 Regular Session \*\*\*

TITLE 31. HEALTH  
CHAPTER 12A. SMOKEFREE AIR

O.C.G.A. § 31-12A-1 (2007)

§ 31-12A-1. Short title

This chapter shall be known and may be cited as the "Georgia Smokefree Air Act of 2005."

**HISTORY:** Code 1981, § 31-12A-1, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

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*O.C.G.A. § 31-12A-1*

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\*\*\* Current through the 2007 Regular Session \*\*\*

TITLE 31. HEALTH  
CHAPTER 12A. SMOKEFREE AIR

O.C.G.A. § 31-12A-1 (2007)

**§ 31-12A-1. Short title**

This chapter shall be known and may be cited as the "Georgia Smokefree Air Act of 2005."

HISTORY: Code 1981, § 31-12A-1, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-2. Definitions**

As used in this chapter, the term:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) "Business" means any corporation, sole proprietorship, partnership, limited partnership, limited liability corporation, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.

(3) "Employee" means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit.

(4) "Employer" means an individual or a business that employs one or more individuals.

(5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

(6) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. This definition shall not include long-term care facilities as defined in paragraph (3) of Code Section 31-8-81.



(7) "Infiltrate" means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.

(8) "Local governing authority" means a county or municipal corporation of the state.

(9) "Place of employment" means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, adult day-care, or health care facility. This term shall not include vehicles used in the course of employment.

(10) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, adult day-care, or health care facility.

(11) "Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term shall include a bar area within any restaurant.

(12) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(13) "Secondhand smoke" means smoke emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the person smoking.

(14) "Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(15) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(16) "Smoking" means inhaling, exhaling, burning, or carrying any lighted tobacco product including cigarettes, cigars, and pipe tobacco.

(17) "Smoking area" means a separately designated enclosed room which need not be entered by an employee in order to conduct business that is designated as a smoking area and, when so designated as a smoking area, shall not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break room.

(18) "Sports arena" means enclosed stadiums and enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

HISTORY: Code 1981, § 31-12A-2, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-3. Smoking prohibited in state and local government buildings**

Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

HISTORY: Code 1981, § 31-12A-3, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-4. Smoking prohibited in enclosed public places**

Except as otherwise specifically authorized in Code Section 31-12A-6, smoking shall be prohibited in all enclosed public places in this state.

HISTORY: Code 1981, § 31-12A-4, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-5. Smoking prohibited in enclosed areas within places of employment; required communications**

(a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking shall be prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

(b) Such prohibition on smoking shall be communicated to all current employees by July 1, 2005, and to each prospective employee upon their application for employment.

HISTORY: Code 1981, § 31-12A-5, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-6. Exemptions**

(a) Notwithstanding any other provision of this chapter, the following areas shall be exempt from the provisions of Code Sections 31-12A-4 and 31-12A-5:

(1) Private residences, except when used as a licensed child care, adult day-care, or health care facility;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated;

(3) Retail tobacco stores, provided that secondhand smoke from such stores does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;

(4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;

(5) Outdoor areas of places of employment;

(6) Smoking areas in international airports, as designated by the airport operator;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity set forth in Code Section 10-13A-2;

(8) Private and semiprivate rooms in health care facilities licensed under this title that are occupied by one or more persons, all of whom have written authorization by their treating physician to smoke;

(9) Bars and restaurants, as follows:

(A) All bars and restaurants to which access is denied to any person under the age of 18 and that do not employ any individual under the age of 18; or

(B) Private rooms in restaurants and bars if such rooms are enclosed and have an air handling system independent from the main air handling system that serves all other areas of the building and all air within the private room is exhausted directly to the outside by an exhaust fan of sufficient size;

(10) Convention facility meeting rooms and public and private assembly rooms contained within a convention facility not wholly or partially owned, leased, or operated by the State of Georgia, its agencies and authorities, or any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly while these places are being used for private functions and where individuals under the age of 18 are prohibited from attending or working as an employee during the function;

(11) Smoking areas designated by an employer which shall meet the following requirements:

(A) The smoking area shall be located in a nonwork area where no employee, as part of his or her work responsibilities, shall be required to enter, except such work responsibilities shall not include custodial or maintenance work carried out in the smoking area when it is unoccupied;

(B) Air handling systems from the smoking area shall be independent from the main air handling system that serves all other areas of the building and all air within the smoking area shall be exhausted directly to the outside by an exhaust fan of sufficient size and capacity for the smoking area and no air from the smoking area shall be recirculated through or infiltrate other parts of the building; and

(C) The smoking area shall be for the use of employees only.

The exemption provided for in this paragraph shall not apply to restaurants and bars;

(12) Common work areas, conference and meeting rooms, and private offices in private places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment; and

(13) Private clubs, military officer clubs, and noncommissioned officer clubs.

(b) In order to qualify for exempt status under subsection (a) of this Code section, any area described in subsection (a) of this Code section, except for areas described in paragraph (1) of subsection (a) of this Code section, shall post conspicuously at every entrance a sign indicating that smoking is permitted.

HISTORY: Code 1981, § 31-12A-6, enacted by Ga. L. 2005, p. 1184, § 2/SB 90; Ga. L. 2006, p. 72, § 31/SB 465.

**§ 31-12A-7. Smoking prohibited in designated nonsmoking places**

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (a) of Code Section 31-12A-8 is posted.

HISTORY: Code 1981, § 31-12A-7, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-8. "No Smoking" signs; ashtrays prohibited in nonsmoking areas**

(a) "No Smoking" signs or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this chapter.

(b) All ashtrays shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of the area, unless such ashtray is permanently affixed to an existing structure.

HISTORY: Code 1981, § 31-12A-8, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-9. Public education program**

The Department of Human Resources and the agency designated by each local governing authority in this state may engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

HISTORY: Code 1981, § 31-12A-9, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-10. Enforcement by the Department of Human Resources and county boards of health**

The Department of Human Resources and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of any establishment or

business at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

HISTORY: Code 1981, § 31-12A-10, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-11. Local operating procedures**

The county boards of health may annually request other governmental and educational agencies having facilities within the area of the local government to establish local operating procedures in cooperation and compliance with this chapter.

HISTORY: Code 1981, § 31-12A-11, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-12. Other laws, rules, regulations, and ordinances not prohibited**

This chapter shall be cumulative to and shall not prohibit the enactment of any other general or local laws, rules, and regulations of state or local governing authorities or local ordinances prohibiting smoking which are more restrictive than this chapter or are not in direct conflict with this chapter.

HISTORY: Code 1981, § 31-12A-12, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

**§ 31-12A-13. Construction**

(a) This chapter shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.

(b) Nothing in this chapter shall be construed as to repeal the provisions of Code Section 16-12-2.

(c) This chapter shall be liberally construed so as to further its purposes.

HISTORY: Code 1981, § 31-12A-13, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.